

December 5, 1994

REPORT TO THE HONORABLE  
MAYOR AND CITY COUNCIL

RECENT LITIGATION - SPAULDING V. CITY OF SAN DIEGO, ET AL.

I am especially pleased to report the final result of the Spaulding litigation. You may recall that Robert Spaulding, the former Planning Department Director, sued the City of San Diego and me following his resignation in the Spring of 1991. Mr. Spaulding's resignation followed the public disclosure of a comprehensive settlement agreement between the City and a former City employee, Susan Bray, with whom Mr. Spaulding had a sexual relationship. The settlement pertained to a discrimination complaint filed by Ms. Bray against the City of San Diego.

Mr. Spaulding sued the City of San Diego for negligent and intentional infliction of emotional distress. Those causes of action were dismissed early in the litigation. Mr. Spaulding also sued me, personally, for malpractice contending that I had agreed to personally represent his private interests implicated in the Bray/Spaulding matter. Needless to say, I disputed that claim.

In July of 1992, the San Diego Superior Court granted summary judgment in my favor finding that no private attorney-client relationship existed between myself and Mr. Spaulding; that I was immune from suit pursuant to the California Government Code; that I had no duty to represent Mr. Spaulding's private interests; that I breached no duty owed to Mr. Spaulding; and, in any event, my actions did not fall below the standard of care for attorneys.

Mr. Spaulding appealed that decision and, in an opinion filed on September 13, 1994, the Court of Appeal affirmed the decision of the trial court. In pertinent part, the appellate court found that in the Spaulding/Bray matter I was acting in my capacity as City Attorney and that no private attorney-client relationship arose between Mr. Spaulding and myself. In addition, the appellate court found that I was immune from liability. In a brief dissent, one of the justices believed there were disputed issues of fact which precluded a summary judgment although that justice admitted that, viewed as a whole,

the evidence supported a conclusion that there was no private attorney-client relationship between myself and Mr. Spaulding.

Mr. Spaulding sought further review of the matter by the California Supreme Court. By order dated November 30, 1994, that court declined to review the case and the decision of the Court of Appeal is now final. The law firm of Sheppard, Mullin, Richter and Hampton, by Michael J. Weaver and Betty Santohigashi, handled the matter in the Superior Court. Chief Deputy City Attorney Leslie J. Girard handled the matter before the Court of Appeal. A copy of the decision is attached for your review.

submitted,

Respectfully

JOHN W. WITT  
City Attorney

LJG:js:Lit.(043.1)  
Attachment  
RC-94-49